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Eric K. Mangiardi

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04/27/2010

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EXAMINER

TRUONG, KEVIN THAO

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

04/27/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/07/2010 has been entered.

### ***Terminal Disclaimer***

2. The terminal disclaimer filed on 04/07/2010 disclaiming the terminal portion of any patent granted on this application has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Election/Restrictions***

1. Applicant's election of a species drawn to figures 13-15, claims 1-12, 15, 16, 18, 19, 23-32, 35, 36, 38, 39, and 43-49 read on elected figures 13-15 in the reply filed on 05/07/2009 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

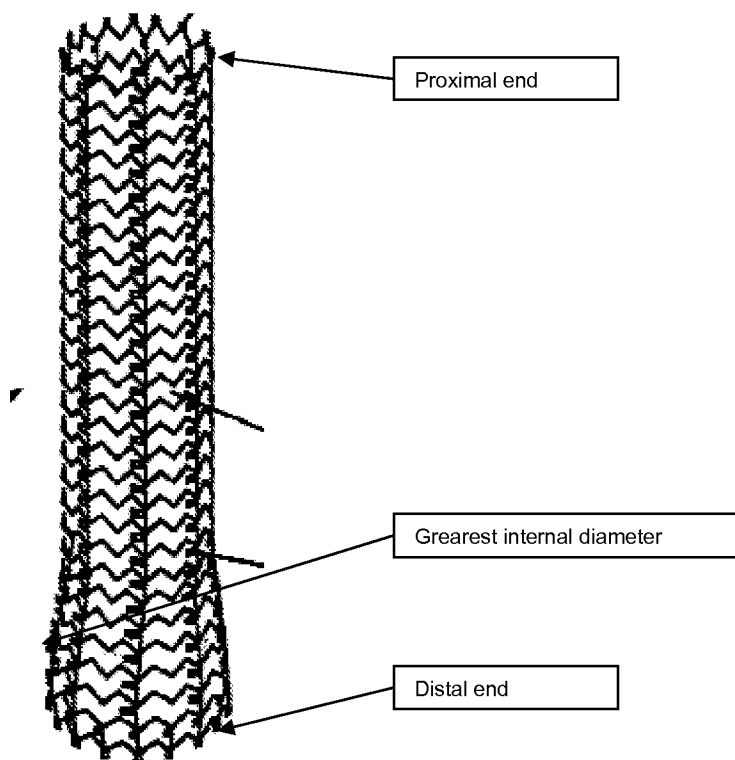
2. Claims 1-12, 15, 16, 18, 19, 23-32, 35, 36, 38, 39, and 43-49 are rejected under 35 U.S.C. 102(e) as being anticipated by Silverstri et al. (US 7547321).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Silverstri et al. discloses the claimed invention including a scaffolding (110) defining a substantially cone-shaped (as shown in fig. 4) and being coated (col. 7, line 62 – col. 8, line 19 and col. 11, lines 32-67); wherein the scaffolding (110) comprises a plurality struts with geometrical patterns formed by angles and connector coupled to respective peaks and/or valleys of each adjacent pair of the circumferential bands, wherein the connector comprising a crossing member and a plurality of leg extending from the crossing member, and wherein the angle at which the legs extend from the crossing member less than 90 degree; wherein the legs having approximately equal lengths within each of the circumferential bands; and wherein each of the expandable circumferential bands having longitudinal ends extending circumferentially at an approximately common longitudinal location and disposed adjacent of the connector;

wherein the flexible portion of the connector positioned between the peaks and /or valleys of adjacent ones of the circumferential bands when the scaffolding is compressed. Note that figure 4, the distal end (114) of the cone-shaped member (110) has an internal diameter larger than the proximal end (112) but appears less than the greatest internal diameter of the cone-shaped member (110) (see below for details).

As to claims 43-49, the device of Silverstri et al. appears capable of performing the method steps as recited in the claims.



### ***Response to Arguments***

3. Applicant's arguments filed 04/07/2009 have been fully considered but they are not persuasive. Applicant's arguments with respect to claims 1, 43, and 49 have been considered but not persuasive due to rejection as applied above.

### ***Conclusion***

This is a RCE of applicant's earlier Application No. 10/674972. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin T. Truong whose telephone number is 571-272-4705. The examiner can normally be reached on Monday-Friday from 8:00 AM to 4:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin T. Truong/  
Primary Examiner, Art Unit 3734

Kevin T. Truong  
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